

J. Michael Sutherland  
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**CARRINGTON, COLEMAN, SLOMAN**  
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*Attorneys for Cumberland 90, Ltd.*

**UNITED STATES BANKRUPTCY COURT  
WESTERN DISTRICT OF TEXAS  
AUSTIN DIVISION**

**In re:**

<b>DH ORCHARD LIMITED,</b>	<b>§</b>	<b>Case No. 09-12154-H4</b>
<i>Debtor.</i>	<b>§</b>	<b>Chapter 11</b>
	<b>§</b>	

**MOTION OF CUMBERLAND 90, LTD. TO LIFT THE AUTOMATIC  
STAY OR, ALTERNATIVELY, FOR ADEQUATE PROTECTION**

**NOTICE**

**THIS PLEADING REQUESTS RELIEF THAT MAY BE ADVERSE TO  
YOUR INTERESTS.**

**IF NO TIMELY RESPONSE IS FILED WITHIN FIFTEEN (15) DAYS  
FROM THE DATE OF SERVICE, THE RELIEF REQUESTED HEREIN  
MAY BE GRANTED WITHOUT A HEARING BEING HELD.**

**A TIMELY FILED RESPONSE IS NECESSARY FOR A HEARING TO  
BE HELD.**

TO THE HONORABLE BANKRUPTCY COURT:

Cumberland 90, Ltd., by and through its undersigned counsel, files this Motion to Lift the Automatic Stay or, Alternatively, For Adequate Protection, and would respectfully show:

**MOTION OF CUMBERLAND 90, LTD. TO LIFT THE AUTOMATIC  
STAY OR, ALTERNATIVELY, FOR ADEQUATE PROTECTION**

## I. BACKGROUND

1. DH Orchard, Limited ("Debtor") filed this chapter 11 case on or about August 3, 2009 (the "Petition Date").
2. In its bankruptcy papers, Debtor designated itself as a "single asset" estate. *See*, Petition, Dock. No. 1.
3. Cumberland 90, Ltd. ("Movant") is secured creditor in this case, holding a deed of trust mortgage in and to Debtor's principal, if not sole, asset, which is the developmental real property described below.<sup>1</sup>
4. The promissory note held by Movant and the deed of trust in favor of Movant, each as amended, are attached hereto as Exhibits "A" and "B," respectively.
5. The subject collateral (the "Property") consists of approximately 564.8 acres of developmental real estate situated in Bexar County, Texas, more fully described in the deed of trust (Exhibit "B" hereto) and in the attachments thereto. The Property (with limited exceptions of no consequence to this Motion) is presently in a "raw" or undeveloped state.
6. As of the Petition Date, Debtor was obligated to Movant in the total sum of approximately \$32,940,784.87, which consisted of 32,546,964.71 in unpaid principal and approximately \$393,820.16 in unpaid interest, attorneys' fees, and other charges.
7. Debtor's obligations to Movant were in default prior to the Petition Date, such obligations had previously been accelerated pursuant to the applicable documents, and a foreclosure of the Property was pending on or about the Petition Date.

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<sup>1</sup> As to the Debtor, the Movant is functionally the first lien holder on the property, as Movant's Note wraps around the preexisting lien of Doss, Ltd.

8. The ninetieth (90<sup>th</sup>) day following the Petition Date occurred on or about November 1, 2009.

## **II. MOTION**

9. Movant seeks relief from the automatic stay pursuant to 11 U.S.C. § 362(d)(1) and, alternatively, § 362(d)(3)(as the statutorily required time periods have expired), so that Movant may proceed with a re-posting of the Property for foreclosure, to conduct a foreclosure of the Property, and to exercise other remedies, all as provided for pursuant to applicable law and/or in the controlling documents.

10. Alternatively, Movant is entitled to adequate protection. However, on information and belief, as set forth elsewhere herein, Debtor is unable to provide adequate protection, which further supports relief for cause pursuant to § 362(d)(1) and § 362(d)(3).

## **III. ARGUMENT**

11. "Cause" exists for relief pursuant to § 362(d)(1) because the Debtor is unable to effectuate any realistic reorganization, unable to provide adequate protection and, additionally, there are virtually no other creditors besides Movant.

12. Moreover, Debtor will be unable to file or confirm any realistic plan of reorganization or fund any requisite interest payments to the Movant, as required by § 362(d)(3).<sup>2</sup>

13. Without limitation, the plan of reorganization filed by the Debtor on or about November 2, 2009 is not reasonably susceptible to confirmation, is not realistic, does not have a reasonable possibility of being confirmed within a reasonable time, and does not pose any

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<sup>2</sup> Movant reserves its rights to seek relief under 11 U.S.C. §362(d)(2) if and as appropriate; however, under the circumstances of this case, the expense to either or both sides of valuing the Property presently seems unwarranted.

obstacle to relief from the automatic stay. In light of the recent filing of this plan, Movant reserves the right to submit further briefing to demonstrate the non-confirmable nature of such plan.

#### IV. RELIEF

**WHEREFORE**, Movant seeks relief so that it may proceed with a re-posting of the Property for foreclosure, to conduct a foreclosure of the Property, and to exercise other remedies, all as provided for pursuant to applicable law and/or in the controlling documents.

DATED: November 6, 2009.

Respectfully submitted,

/s/ J. Michael Sutherland

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#### **CERTIFICATE OF CONFERENCE**

The undersigned hereby certifies that he discussed the relief requested in this Motion with Lynn Butler, counsel for the Debtor, on November 6, 2009, and the Debtor opposes the relief sought in the Motion.

/s/ J. Michael Sutherland  
J. Michael Sutherland

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that copies of the *Motion of Cumberland 90, Ltd. to Lift the Automatic Stay or, Alternatively, for Adequate Protection* and the *Affidavit of George A. Field, III* were served on counsel for the Debtor and the U.S. Trustee as shown below, and on all parties listed on the attached Service List via ECF-electronic mail and/or U.S. Mail, postage prepaid, on this 6th day of November 2009. Pursuant to L.R. 4001, the *Affidavit of George A. Field, III* was not filed with this Court.

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U.S. Trustee  
903 San Jacinto Blvd., Rm. 230  
Austin, TX 78701

/s/ J. Michael Sutherland  
J. Michael Sutherland

863232v.5

**SERVICE LIST**

[864272]

DH Orchard Limited  
6836 Bee Caves Road, #202  
Austin, TX 78746

Adams & Polunsky  
8000 IH 10 West, #1145  
San Antonio, TX 78230

Blackhawk Development, LLC  
6836 Bee Caves Road, #202  
Austin, TX 78746

Cumberland 90, Ltd.  
c/o J. Michael Sutherland  
Carrington Coleman, et al.  
901 Main Street, #5500  
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Doss, Ltd.  
Attn: Bill F. Knight  
6300 Ridglea Place, #1107  
Fort Worth, TX 76116

Internal Revenue Service  
Centralized Insolvency Operations  
P.O. Box 21126  
Philadelphia, PA 19114-0326

Puritan Securities, Inc.  
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Westport, CT 06880

T-Slash-Bar Livestock, Inc.  
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San Antonio, TX 78209

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Bexar County  
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Ensemble Financial Services  
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Pittsford, NY 14534

Orchard Limited GP, LLC  
c/o Blackhawk Development LLC  
6836 Bee Caves Road, #202  
Austin, TX 78746

QA3 Financial Corp.  
One Valmont Plaza, 4th Floor  
P.O. Box 842966  
Omaha, NE 68154

Virtus Securities, LLC  
6836 Bee Cave Road, #208  
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United States Trustee  
903 San Jacinto Blvd, #230  
Austin, TX 78701

Bexar County Tax Assessor  
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Dia Lucrui Global, LP  
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